S.B.CRIMINAL MISC. PETITION NO.1118/2006

M/s Trimurtee Fertilizers Ltd. & Ors.
Vs.
RajRajasthan State Mines & Minerals Ltd.

Date of order : : 12.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Suresh Kumbhat, for the petitioners.
Mr.Pradeep Shah, for the respondent/complainant.

This misc. petition under Section 482 Cr.P.C. has been filed on behalf of the petitioners against the order dated 2.8.2006 passed by learned Judicial Magistrate No. 1 (North), Udaipur in Cr. Case No. 174/97 whereby the learned Magistrate has dismissed the application under Section 91 Cr.P.C. filed by the petitioners for summoning the documents from the complainant as also for quashing of the complaint.

Learned counsel for the petitioner states that learned Magistrate has not considered the matter in true perspective and has wrongly dismissed the application filed by the petitioners for summoning the documents which are in power and possession of

the complainant. He further states that previously, one more application was filed filed by the petitioners before the learned Magistrate on the same point which was also dismissed on 8.3.2006. The objection of learned counsel for the non-petitioner in the lower court was that documents were not in his power and possession. Therefore, the learned Magistrate dismissed the application of the petitioners. Learned counsel for the petitioner states that documents are in the possession of the complainant, therefore the rejection of the application for summoning the documents is nothing but abuse of the process of the court.

Learned counsel for the respondent has supported the order impugned and states that order impugned does not require any interference.

I have considered the submissions advanced by learned counsel for the parties and also gone through the order impugned passed by the learned Magistrate.

Looking to all the facts and circumstances of the case and in the interest of justice, both the parties are directed to file

affidavit in the lower court whether required documents are in the possession of complainant or not. Learned Magistrate shall decide the application filed by the petitioner afresh after hearing both the parties and also affidavits produced by them in accordance with the law.

With the above observation, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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